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**OFFICE OF PETITIONS**

In re Application of :  
David Y. Zhang :  
Application No. 09/978,261 : DECISION ON PETITION  
Filed: October 15, 2001 : UNDER 37 CFR 1.78(a)(3)  
Attorney Docket No. 251305.0028 SBP/MCD :

This is a decision on the petition, treated under 37 CFR 1.78(a)(3), filed January 25, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to the prior-filed nonprovisional and international applications set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) and (iii) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The

relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable. In this regard, the amendment improperly states that Application No. 08/596,331 is "the United States national stage application corresponding to PCT International Application PCT/US95/07671." Accordingly, if petitioner desires to claim priority to this PCT application, the proper relationship from the application claiming benefit of priority to the PCT application must be provided.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3), along with an Application Data Sheet or an amendment (complying with 37 CFR 1.121 and/or 37 CFR 1.76(b)(5)), correcting the relationship problem with the PCT application is required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.



Frances Hicks  
Petitions Examiner  
Office of Petitions